

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII
901 NORTH FIFTH STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)
)
City of Smithville)
107 West Main)
Smithville, Missouri 64089)
)
Respondent)
)
Proceedings under Section 309(g) of the)
Clean Water Act, 33 U.S.C. § 1319(g))
_____)

Docket No. CWA-07-2007-0080

CONSENT AGREEMENT AND
FINAL ORDER

The United States Environmental Protection Agency (EPA), Region VII (Complainant) and the City of Smithville (Respondent) have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

ALLEGATIONS

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 309(g) of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act (CWA), 33 U.S.C. § 1319(g), and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22.

2. This Consent Agreement and Final Order serves as notice that the United States Environmental Protection Agency has reason to believe that Respondent has violated Sections 301 and 402 of the CWA, 33 U.S.C. § 1311 and § 1342, and regulations promulgated thereunder.

Parties

3. The authority to take action under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), is vested in the Administrator of EPA. The Administrator has delegated this authority to the Regional Administrator, EPA, Region VII, who in turn has delegated it to the Director of the Water, Wetlands and Pesticides Division of EPA, Region VII.

4. Respondent, the City of Smithville, Missouri, owns and operates a publicly-owned treatment works (POTW) that treats municipal and industrial wastewater.

Statutory and Regulatory Framework

5. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants except in compliance with, inter alia, Section 402 of the CWA, 33 U.S.C. § 1342. Section 402 of the CWA, 33 U.S.C. § 1342, provides that pollutants may be discharged only in accordance with the terms of a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to that Section.

6. The CWA prohibits the discharge of “pollutants” from a “point source” into a “navigable water” of the United States, as these terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362.

7. To implement Section 402 of the CWA, EPA promulgated regulations codified at 40 C.F.R. Part 122. Under 40 C.F.R. Part 122.1, a NPDES permit is required for the discharge of pollutants from any point source into waters of the United States.

8. The Missouri Department of Natural Resources (MDNR) is the state agency with the authority to administer the federal NPDES program in Missouri pursuant to Section 402 of the CWA, implementing regulations. Pursuant to Section 402(i) of the CWA, 33 U.S.C. 1342(i), the EPA maintains concurrent enforcement authority with authorized states for violations of the CWA.

General Allegations

9. Respondent is a “person” as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

10. Respondent owns and operates a publicly owned treatment works on Lowman Road in Smithville, Missouri, 64089 (Respondent’s POTW), which receives and treats wastewater from various domestic and industrial sources.

11. Respondent’s POTW is a “point source” as defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

12. Respondent's POTW causes the "discharge of pollutants" as defined by Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

13. Respondent's POTW discharges pollutants into the Little Platte River. The Little Platte River is a "navigable water" as defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

14. Respondent's discharge of pollutants from its POTW requires a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

15. MDNR issued NPDES Permit No. MO-0055204 to the Respondent, effective January 24, 2003, for discharges from its POTW into the Little Platte River. The NPDES permit expires January 23, 2008.

16. On March 13, 2006, EPA performed an inspection of Respondent's POTW under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a).

Findings of Violation

Count 1

FAILURE TO COMPLY WITH RECORD KEEPING REQUIREMENTS

17. Part I, Section A of the Standard Conditions of Respondent's NPDES permit, contain requirements for monitoring and reporting of pollutants discharged from Respondent's POTW. The requirement for monitoring and reporting contain, inter alia, the following requirements:

Recording of Results. a. For each measurement or sample taken pursuant to the requirements of this permit, the permittee shall record the following information: (i) the date, exact place, and time of sampling or measurements; (ii) the individual(s) who performed the sampling or measurements; (iii) the date(s) analyses were performed; (iv) the individual(s) who performed the analyses; (v) the analytical techniques or methods used; and (vi) the results of such analyses.

18. At the time of the March 2006 EPA inspection, Respondent was not recording the analytical techniques or methods used in sampling effluent as required by Respondent's NPDES permit.

19. Respondent's failure to record the analytical techniques or methods used in sampling effluent is a violation of 40 C.F.R. § 122.41(j) and the terms and conditions of Respondent's NPDES permit, and as such, is a violation of Sections 301(a) and 402 of the CWA, 33 U.S.C. § 1311(a) and § 1342.

Count 2
FAILURE TO MONITOR EFFLUENT

20. Part A of Respondent's NPDES permit contains effluent limitations and monitoring requirements of pollutants discharged from Respondent's POTW. Respondent is required to monitor at a frequency of once per month and submit monitoring reports monthly to MDNR for the following effluents:

Five Day Biochemical Oxygen Demand (BOD₅)
Total Suspended Solids (TSS)
pH
Ammonia as N (Summer)
Ammonia as N (Winter)
Nitrate and Nitrite as N
Total Kjeldhal Nitrogen (TKN)

21. A review of Respondent's monitoring reports revealed that, from February 2004 to December 2004, Respondent failed to monitor effluent and submit monitoring reports for the following effluent for the following months:

- a. TKN and Nitrite and Nitrate as N, February 2004
- b. TKN and Nitrite and Nitrate as N, May 2004
- c. Ammonia as N, BOD₅, TSS, TKN and Nitrite and Nitrate as N, August 2004
- d. Ammonia as N, BOD₅, TSS, TKN and Nitrite and Nitrate as N, October 2004
- e. Ammonia as N, BOD₅, TSS, TKN and Nitrite and Nitrate as N, November 2004
- f. Ammonia as N, December 2004

22. Respondent's failure to monitor effluent and submit monitoring reports is a violation of 40 C.F.R. § 122.41(I)(4) and the terms and conditions of Respondent's NPDES permit, and as such, is a violation of Sections 301(a) and 402 of the CWA, 33 U.S.C. § 1311(a) and § 1342.

Count 3
FAILURE TO PROPERLY OPERATE AND MAINTAIN POTW

23. Part I, Section B of the Standard Conditions of Respondent's NPDES permit, contain management requirements for, inter alia, facilities operation. The requirements for facilities operation require permittees to operate and maintain facilities to comply with applicable permit conditions.

24. At the time of the March 2006 EPA inspection, Respondent was not operating and maintaining Respondent's POTW in compliance with the conditions of Respondent's NPDES permit.

25. Respondent's failure to operate and maintain Respondent's POTW in compliance with the conditions of Respondent's NPDES permit is a violation of 40 C.F.R. § 122.41(e) and the terms and conditions of Respondent's NPDES permit, and as such, is a violation of Sections 301(a) and 402 of the CWA, 33 U.S.C. § 1311(a) and § 1342.

Count 4
EFFLUENT LIMIT VIOLATIONS

26. Part A of Respondent's NPDES permit sets effluent limits for discharges from Respondent's POTW to Little Platte River, effective upon issuance. Respondent is required to perform sampling at least once per month, the results of which are reported to MDNR. Respondent's NPDES permit contains, inter alia, the following effluent limits:

- a. Biochemical Oxygen Demand₅ (BOD₅), 45 mg/L daily maximum, 30 mg/L monthly average.
- b. Total Suspended Solids (TSS), 45 mg/L daily maximum, 30 mg/L monthly average.
- c. Ammonia as N (Summer, April 1-October 31), 6.4 mg/L daily maximum, 3.2 mg/L monthly average.
- d. Ammonia as N (Winter, November 1-March 31), 11.2 mg/L daily maximum, 5.6 mg/L monthly average.

27. A review of Respondent's records revealed that Respondent's effluent discharge exceeded the permitted limitations for BOD₅ and TSS in March 2004:

28. A review of Respondent's records revealed that Respondent's effluent discharge exceeded the permitted limitations for Ammonia as N in the following months:

- | | |
|-------------------|-------------------|
| a. January 2004 | i. July 2005 |
| b. February 2004 | j. August 2005 |
| c. April 2004 | k. September 2005 |
| d. May 2004 | l. December 2005 |
| e. September 2004 | m. January 2006 |
| f. April 2005 | n. February 2006 |
| g. May 2005 | o. June 2006 |
| h. June 2005 | p. July 2006 |

29. Respondent's discharges of pollutants in excess of the effluent limits in Respondent's NPDES permit for BOD₅, TSS and Ammonia as N are violations of the terms and conditions of

Respondent's NPDES permit, and as such, are a violations of Sections 301(a) and 402 of the CWA, 33 U.S.C. § 1311(a) and § 1342.

Relief

30. Based on the foregoing Findings of Violation, and pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), EPA, Region VII hereby proposes to issue a Final Order assessing an administrative penalty against the Respondent for the violations cited above, in the amount of \$18,000.

CONSENT AGREEMENT

1. Respondent and EPA agree to the terms of this Consent Agreement and Final Order and Respondent agrees to comply with the terms of this Consent Agreement and Final Order.

2. Respondent admits the jurisdictional allegations of this Consent Agreement and Final Order and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of this Consent Agreement and Final Order.

3. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this Consent Agreement and Final Order.

4. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above, and its right to appeal this Consent Agreement and Final Order.

5. Respondent and Complainant agree to conciliate the matters set forth in this Consent Agreement and Final Order without the necessity of a formal hearing and agree to bear their own costs and attorney's fees incurred as a result of this action.

6. This Consent Agreement and Final Order addresses all civil and administrative claims for the CWA violations identified above. Complainant reserves the right to take any enforcement action with respect to any other violations of the CWA or any other applicable law.

7. Nothing contained in this Consent Agreement and Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.

8. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this Consent Agreement and Final Order and to execute and legally bind Respondent to it.

9. Respondent certifies by the signing of this Consent Agreement and Final Order that, to the best of Respondent's knowledge, it is in compliance at Respondent's POTW with the

requirements of Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342.

10. The effect of settlement described in paragraph 6 above is conditional upon the accuracy of the Respondent's representations to EPA, as memorialized in paragraph 9 above, of this Consent Agreement and Final Order.

11. Respondent agrees that, in settlement of the claims alleged in this Consent Agreement and Final Order, Respondent shall pay a penalty of \$18,000 as set forth in paragraph 1 of the Final Order.

12. Respondent understands that failure to pay any portion of the civil penalty on the date the same is due may result in the commencement of a civil action in Federal District Court to collect said penalty, along with interest thereon at the applicable statutory rate.

FINAL ORDER

Payment Procedures

Pursuant to the authority of Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and according to terms of this Consent Agreement and Final Order, IT IS HEREBY ORDERED THAT:

1. Respondent shall pay a civil penalty of Eighteen Thousand Dollars (\$18,000) within thirty days of the effective date of this Final Order.

2. Payment of the penalty shall be by cashier or certified check made payable to the "United States Treasury" and remitted to:

U.S. Environmental Protection Agency Region VII
P.O. Box 371099M
Pittsburgh, Pennsylvania 15251.

The payment shall identify the Respondent by name and docket number (CWA-07-2007-0080). Copies of the check shall be mailed to:

Jonathan W. Meyer
Assistant Regional Counsel
U.S. Environmental Protection Agency - Region VII
901 North 5th Street
Kansas City, Kansas 66101

and

Kathy Robinson
Regional Hearing Clerk
U.S. Environmental Protection Agency - Region VII
901 North 5th Street
Kansas City, Kansas 66101.

3. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Consent Agreement and Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

Parties Bound

4. This Final Order portion of this Consent Agreement and Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

General Provisions

5. Notwithstanding any other provision of this Consent Agreement and Final Order, EPA reserves the right to enforce the terms of the Final Order portion of this Consent Agreement and Final Order by initiating a judicial or administrative action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319, and to seek penalties against Respondent or to seek any other remedy allowed by law.

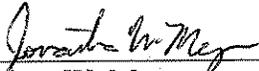
6. Complainant reserves the right to take enforcement action against Respondent for any future violations of the CWA and its implementing regulations and to enforce the terms and conditions of this Consent Agreement and Final Order.

7. This Order shall be entered and become effective only after the conclusion of the period of public notice and comment required pursuant to Section 309(g)(4) of the CWA, 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

8. Respondent and Complainant shall bear their respective costs and attorney's fees.

9. The headings in this Consent Agreement and Final Order are for convenience of reference only and shall not affect interpretation of this Consent Agreement and Final Order.

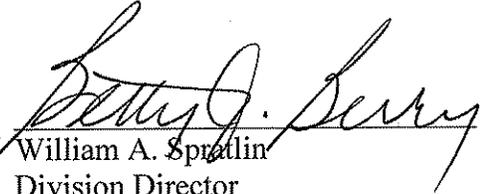
For the Complainant:
The United States Environmental Protection Agency



Jonathan W. Meyer
Assistant Regional Counsel

1-9-08

Date



William A. Spratlin
Division Director
Water, Wetlands and Pesticides Division

01/30/08

Date

For the Respondent:

Charles D. Hitchborn

Printed Name:

Title:

CHARLES D. HITCHBORN
MAYOR

Oct. 30, 2007

Date

IT IS SO ORDERED. This Final Order shall become effective immediately.



Robert Patrick
Regional Judicial Officer

Date February 6, 2008

IN THE MATTER OF City of Smithville, Respondent
Docket No. CWA-07-2007-0080

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to
Attorney for Complainant:

Jonathan W. Meyer
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Gerry Vernon
City Administrator
107 West. Main St.
Smithville, Missouri 64089

Dated: 2/8/08


Kathy Robinson
Hearing Clerk, Region 7